

IN THE SUPREME COURT OF THE STATE OF DELAWARE

COREY BAILEY,	§
	§ No. 531, 2010
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0710023622
Plaintiff Below-	§
Appellee.	§

Submitted: November 1, 2010

Decided: January 14, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **BERGER**, Justices

**ORDER**

This 14th day of January 2011, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Corey Bailey, filed this appeal following his sentencing for a violation of probation (VOP). The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Bailey's opening brief that his appeal is without merit. We agree.

(2) The record reflects that Bailey pled guilty in May 2008 to one count of Rape in the Fourth Degree. The Superior Court sentenced him to fifteen years at Level V incarceration, with credit for 210 days previously

served, suspended for one year in a residential drug treatment program to be followed by decreasing levels of supervision. Bailey was found guilty of and sentenced for two subsequent violations of his probation in April 2009 and June 2009. Bailey was charged with his third VOP in July 2010 for missing three consecutive appointments with his probation officer. Bailey admitted to the violations at the VOP hearing but asserted that his failure to attend his appointments was attributable to a new medication he was taking for his mental health. The Superior Court, noting Bailey's extensive criminal record and his history of violating probation, sentenced Bailey to thirteen years and one month at Level V incarceration, with credit for nineteen days served, to be suspended after serving three years in prison for one year at Level IV work release followed by one year at Level III probation. Bailey appeals that sentence.

(3) In his opening brief on appeal, Bailey contends that his sentence was excessive given the technical nature of his violations and that his sentence was excessive compared to other probationers who were sentenced by the same judge on the same day Bailey was sentenced. We disagree.

(4) If a defendant is found guilty of violating the terms of a previously imposed probationary period, the sentencing court is authorized

by law to reimpose any previously suspended prison term.<sup>1</sup> In this case, the Superior Court imposed a sentence that was less than the amount of time remaining to be served on Bailey's sentence. The sentencing judge explained why he was imposing Level V time for Bailey's technical violations, namely that Bailey had an extensive criminal record and a history of prior violations. Under the circumstances, we find no error or abuse in the Superior Court's sentencing order.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland  
Justice

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<sup>1</sup> Del. Code. Ann. tit. 11, § 4334(c) (2007); *Gamble v. State*, 728 A.2d 1171, 1172 (Del. 1999).